

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEPHANIE FENELON,

Plaintiff,

- against -

GASTON VALCIN, et al.,

Defendants.

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**REPORT AND
RECOMMENDATION**

04 CV 4222 (ERK)

On June 1, 2006, the parties in this action entered into a Settlement Agreement and Order (the "Agreement") in which it was agreed that to resolve plaintiff's claims, defendants were to make payments in the total amount of \$65,000, including pre-judgment and post-judgment interest.¹ Under the Agreement, the first payment of \$20,000 was due on August 15, 2006, and the second payment of \$20,000 was due on September 30, 2006.

The defendants failed to make the second payment on or before September 30, 2006. Initially, plaintiff agreed to extend the time to remit the last payment until January 23, 2007. When payment still had not been made, plaintiff sought entry of judgment. On several occasions, this Court has held conferences at which the defendants requested additional time to pay. At the most recent conference held on May 4, 2007, defendant Joseph presented a letter from another entity offering to pay Mr. Joseph the \$20,000 owed by defendants on or before May 31, 2007. Based on the defendants' representation that they would make the final payment upon receipt of this amount, the Court granted defendants one last extension of time to cure the default under the

¹In addition to the \$40,000 in payments provided for under the Agreement, defendants had previously made payments to the plaintiff in the amount of \$25,000.

Agreement. Defendants were warned that failure to pay by May 31, 2007 would result in a recommendation that judgment be entered in favor of plaintiff pursuant to the Agreement.

By Affidavit dated June 21, 2007, plaintiff's counsel informed the Court that defendants still have not complied with the Agreement and have not made the final payment by May 31, 2007 as Ordered in the last conference with the Court. Accordingly, plaintiff moves for entry of judgment in accordance with the terms of the Agreement. Under the Agreement, in the event of a material breach, defendants agreed that judgment would enter in the amount of \$72,500, minus the amounts already paid, plus interest calculated at a rate of nine percent per annum pursuant to N.Y. C.P.L.R. § 5004.

Having supervised the progress of this case and having given defendants ample opportunity to make the payments promised under the Agreement, this Court finds that defendants are in breach of the Agreement and respectfully recommends that judgment enter in favor of the plaintiff in the amount of \$37,467.81.

SO ORDERED.

Dated: Brooklyn, New York
June 26, 2007



Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York